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15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,)	No. P1300CR20081339
)	
18 Plaintiff,)	Div. 6
)	
19 vs.)	APPLICATION FOR
)	CONDITIONAL STAY
20 STEVEN CARROLL DEMOCKER,)	
)	
21 Defendant.)	
)	
)	
)	

22 Steven DeMocker, through his counsel undersigned, submits this Application for
23 a Conditional Stay to suspend all proceedings in this case if necessary after the
24 conclusion of the additional voir dire scheduled to commence on June 2, 2010. A stay
25 may be necessary in order to afford Mr. DeMocker the opportunity to seek Special
26 Action review of this Court's potential decision to proceed with trial using this death-

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA ✓

2010 JUN -1 PM 4:05

JEANNE HICKS, CLERK

BY: Katherine Glenn

1 qualified jury. Among other reasons raised with the Court on May 27 and May 28,
2 2010, Mr. DeMocker continues to claim that his fundamental constitutional rights under
3 the Arizona and United States Constitutions are violated by proceeding to trial with a
4 jury that has been selected to systematically exclude all prospective jurors who express
5 sincere moral or personal concerns about the death penalty. This Application is
6 necessarily conditional as the Court has ordered the parties to engage in additional voir
7 dire with the recognition that this additional juror questioning might lead to dismissal of
8 the jury presently empanelled. If we are not ordered to proceed with trial following the
9 additional voir dire, this Application will become moot. If it is not moot, time may not
10 be available to brief and argue this stay application. Thus, this application is based on
11 the following brief Memorandum.
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15 MEMORANDUM

16 This Court has dismissed the death penalty. It has done so at the end of the jury
17 selection process in this case. A panel of 40 prospective jurors has been screened and
18 approved by the Court. Each of those prospective jurors was individually examined by
19 the Court and counsel as part of the capital voir dire process. Each of them was
20 examined in detail about the unique aspects of the death penalty process. The Court
21 now contemplates that these potential jurors will be brought back to court for further
22 examination to explain to them that this is no longer a death penalty case and that much
23 of what they were told at each stage of the selection process is no longer applicable and
24 should be disregarded by them. The Court's stated goal is to determine whether this
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1 process will result in a panel of 30 or more jurors from whom a jury of 12 plus 6
2 alternates might be selected to serve in the non-death penalty trial of Steven DeMocker.

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4 As the Court put it, "I think that it's incumbent on the Court to at least make
5 some inquiry about that in the form of additional voir dire." (Tr. 5/28/10, at 59, 60.)
6 The defense, as the Court will recall, expressed preliminarily the view that we may be
7 obligated to participate in this process as the Court has outlined it and to defer final
8 determination on filing a Special Action until we have gone through this additional voir
9 dire step. (Id. at 72-73). On further reflection over the weekend, we have concluded
10 that the Special Action rules may dictate our participation in this phase, and we intend
11 to participate, and to do so "without prejudice" to the filing of a Special Action. (Id. at
12 70). *See* Ariz. R.P.S.A. 3 (listing "[t]he only questions that may be raised in a special
13 action").
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16 As explained in the Motion to Dismiss Death-Qualified Jury, filed on May 27,
17 2010, we do not believe Mr. DeMocker can receive a fair trial before a death-qualified
18 jury. This Court has rejected these arguments subject to an endeavor to determine
19 whether "unbiased" jurors can be found from within this group. We have drafted and
20 are submitting herewith a proposed script that might be read at the beginning of the
21 resumed voir dire tomorrow (June 2, 2010). In several respects, this script and any
22 additional voir dire cannot cure the constitutional problems we have identified.
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25 First, this process will not bring back the jurors who were dismissed because of
26 their moral opposition to the death penalty. As the Court observed, it is undeniable that
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1 there are some jurors who were dismissed because of their anti-death penalty views. (Id.
2 at 59.) Respectfully, we do not accept the Court's conclusion that these dismissals are
3 constitutionally immaterial. It is not sufficient to say that the remaining jurors might be
4 "fair and impartial." (Id. at 61.) Whether they are or not, the systematic exclusion of
5 citizens with significant qualms about the death penalty offends Mr. DeMocker's Sixth
6 Amendment jury trial rights as well as his right to an impartial jury under the Arizona
7 Constitution.
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10 The present jury panel is also constitutionally defective because potential panel
11 members were told in great detail what the potential punishment is if Mr. DeMocker is
12 convicted. *State v. McLoughlin*, 133 Ariz. 458, 461-62, 652 P.2d 531, 534-35 (1982)
13 ("The disposition of a defendant upon the jury's verdict has nothing to do with the
14 defendant's guilt or innocence and should never be considered by the jury in its
15 deliberations."). Nothing the Court or counsel can say this week can seriously be
16 thought to wipe from the juror's minds the knowledge that the only punishment is life in
17 prison, either with or without the possibility of parole after 25 years. This fundamental
18 problem cannot be eliminated by the simple reminder that in the ordinary case jurors are
19 told not to concern themselves with punishment. Again, respectfully, we disagree with
20 the Court's conclusion (Id. at 58) that a reminder or admonition at this stage will
21 remove the prejudice that attends informing a jury of punishment in any non-capital
22 case.
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1 We will not belabor the additional arguments made in our Motion to Dismiss
2 Death-Qualified Jury, filed on May 27, 2010, and elaborated upon in argument in this
3 Court on May 28, 2010. The attempt to draft the attached proposed script has
4 confirmed for us the impossibility of removing the defects that will be inherent in seating
5 at this stage a jury for a non-death penalty case from a death-qualified panel. Nor will
6 additional voir dire eliminate the confusion already expressed by numerous members of
7 this panel in their questionnaires, in their answers to questions during individual voir
8 dire and in the inevitable confusion that will necessarily result from this change in
9 circumstance.
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12 These issues and the others we have identified may prove uniquely appropriate
13 for Special Action review, Ariz. R.P.S.A. 1(a) (special action review is appropriate
14 when there is no “equally plain, speedy, and adequate remedy by appeal”), but plainly
15 they cannot be heard or considered in the few moments between the conclusion of jury
16 selection and the commencement of the trial as presently scheduled. For this reason we
17 ask this Court to consider granting a stay of these proceedings to afford Mr. DeMocker
18 time for prompt Special Action review if that becomes necessary. *See* Ariz. R.P.S.A. 5;
19 1B Arizona Appellate Handbook § 7.7.3 (2010) (“In the court of appeals, a request for
20 an interlocutory stay will not be addressed, much less granted, unless the petitioner has
21 first requested the respondent judge to stay the trial court proceedings and that request
22 has been denied.”). We see no insuperable barrier to the brief continuance that would
23 be required in the event that this jury panel is not dismissed. Jurors could again be
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1 instructed as they have been repeatedly to avoid reading about or communicating about
2 the case until they hear further from the Court. Most of these panel members will
3 already have been complying with this admonition for seven or eight weeks. Defense
4 counsel have already begun researching the relevant issues and we anticipate that a
5 Petition for Special Action Relief could be filed expeditiously.
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7 Again, we hope that no appellate proceeding is necessary, but in the event that
8 we determine on Mr. DeMocker's behalf that we are required to seek immediate review,
9 this brief stay of proceedings will become essential. In that event, the balance of
10 hardships will sharply favor a short pause in this trial.
11

12 Respectfully submitted this 1st day of June, 2010
13

14
15 By: 

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25 **ORIGINAL** of the foregoing hand delivered for
26 filing this 1st day of June, 2010, with:

27 Jeanne Hicks
28 Clerk of the Court

1 Yavapai County Superior Court
2 120 S. Cortez
3 Prescott, AZ 86303

4 **COPIES** of the foregoing hand delivered this
5 this 1st day of June, 2010, to:

6 The Hon. Thomas B. Lindberg
7 Judge of the Superior Court
8 Division Six
9 120 S. Cortez
10 Prescott, AZ 86303

11 Joseph C. Butner, Esq.
12 Prescott Courthouse basket

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